

**DISTRICT OF COLUMBIA  
DOH OFFICE OF ADJUDICATION AND HEARINGS**

DISTRICT OF COLUMBIA  
DEPARTMENT OF HEALTH

Petitioner,

v.

H&J INVESTMENT, INC.<sup>1</sup>  
Respondents

Case Nos.: I-00-11170  
I-00-11171

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**ORDER**

**I. Introduction**

This case involves a Checkers Drive In Restaurant at 1401 Maryland Avenue, N.E., (the “Maryland Avenue restaurant”), one of the two such restaurants involved in *DOH v. Checkers Drive In Restaurant*, OAH No. C-10355, also decided today. On March 21, 2001, the Government served a Notice of Infraction alleging that Respondent H&J Investment, Inc. (“H&J”) violated of 21 DCMR 534.2, which requires the owner or other person in control of a storm water management facility to maintain the facility in good condition and to perform promptly any necessary repair and restoration of the facility, and 21 DCMR 532.4(c), which requires compliance with an approved construction plan for a non-point source. The Government filed this case subsequent to the hearing in the *Checkers* case to charge an additional Respondent with violating 22 DCMR 532.4(c) and 534.2 on June 22, 2000. Those are the same alleged violations, on the same date, as those at issue in the *Checkers* case. The

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<sup>1</sup> Based upon the testimony at the hearing, as well as the Notices of Infraction themselves, the caption has been amended to name H&J Investment Inc. as the only Respondent in this case.

Government's theory in this case is that Respondent H&J owns the Maryland Avenue restaurant and is therefore liable for those violations in addition to the Respondents in the *Checkers* case.

Respondent did not file an answer to the first Notice of Infraction within the required twenty days after service (fifteen days plus five additional days for service by mail pursuant to D.C. Official Code §§ 2-1802.02(e), 2-1802.05). Accordingly, on April 18, 2001, this administrative court issued an order finding Respondent in default and subject to the statutory penalty of \$200 required by D.C. Official Code §§ 2-1801.04(a)(2)(A) and 2-1802.02(f), and requiring the Government to serve a second Notice of Infraction.

The Government then served a second Notice of Infraction on April 25, 2001. Respondent also did not answer that Notice within twenty days of service. Accordingly, on June 14, 2001, a Final Notice of Default was issued, finding Respondent in default on the second Notice of Infraction and subject to total statutory penalties of \$400 pursuant to D.C. Official Code §§ 2-1801.04(a)(2)(B) and 2-1802.02(f). The Final Notice of Default also set July 13, 2001 as the date for an *ex parte* proof hearing, and afforded Respondent an opportunity to appear at that hearing to contest liability, fines, penalties or fees. Copies of both the first and second Notices of Infraction were attached to the Final Notice of Default.

On July 13, the Government, represented by Walter Caldwell, the inspector who issued the Notice of Infraction, appeared for the hearing. There was no appearance for the Respondent. Based upon the testimony at the hearing, my evaluation of the credibility of the Government's witness and the entire record in this case, I now make the following findings of fact and conclusions of law.

## **II. Findings of Fact**

At the hearing, I granted the Government's motion to incorporate the record of the *Checkers* case into the record of this case, and I admitted additional evidence concerning the ownership of the Maryland Avenue property. The District of Columbia property tax records identify H&J as the owner of the property at 1401 Maryland Avenue, N.E. Those records give H&J's address as "c/o Checkers – S Sonntag, P O Box 18800 Clearwater FL. 33762." Petitioner's Exhibit ("PX") 107. At the hearing, the Government made clear its intention to name H&J as the Respondent in this case, not Checkers or S Sonntag. The Notices of Infraction, however, identify the Respondent as "c/o Checkers – S Sonntag H&J Investment Inc.," thereby combining the name of the Respondent with its address in a potentially confusing manner.

Based upon the certificate of service, I find that the Government served the first Notice of Infraction upon "Checkers" and "John Tag," and not upon H&J, whose name does not appear in the certificate of service.<sup>2</sup> Based upon the certificate of service for the second Notice of Infraction, I find that it was served upon H&J in care of Checkers and S Sonntag at the address listed in the property tax records.

On August 24, 2001, the Docket Clerk's Office received a letter from the Corporate Counsel for Checkers Drive-In Restaurants, Inc. ("Checkers") asserting that the Maryland Avenue restaurant is owned and operated by one of its franchisees, and that Checkers neither owns nor operates the facility. The letter is dated June 29, 2001, and it is not apparent from the record why it took almost two months to arrive. A copy of the letter had been sent to Mr.

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<sup>2</sup> Mr. Caldwell did not serve the first Notice of Infraction. The Government employee who did so apparently misread the notice's handwritten reference to "S Sonntag" as "John Tag."

Caldwell's supervisor, however, and it was admitted into evidence at the July 13 hearing. PX 108.

### **III. Conclusions of Law**

For a default case to proceed to a final order, a Respondent must have failed to answer two Notices of Infraction that were properly served upon it. D.C. Official Code § 2-1802.02(f). *See DOH v. Johns*, OAH No. I-00-60103 at 7 (Final Order, January 30, 2002) ("Until Respondent fails to answer two Notices of Infraction accusing her of the same violation, a default hearing is premature.") The first Notice of Infraction, however, was served upon Checkers and "John Tag," who are not Respondents here. H&J, therefore, has not been served with two Notices of Infraction, and this case can not proceed to a final order based upon H&J's default.

### **IV. Order**

Based upon the foregoing finding of fact and conclusions of law, it is, this \_\_\_\_\_ day of \_\_\_\_\_, 2002:

**ORDERED**, that, if the Government seeks to pursue this case against Respondent H&J Investment, Inc., it shall, within 15 days of the date of this Order, file and serve a second Notice of Infraction upon Respondent; and it is further

**ORDERED**, that if the Government does not serve a second Notice of Infraction upon Respondent in accordance with the preceding paragraph, the Clerk shall mark this case **CLOSED**; and it is further

**ORDERED**, that this Order is without prejudice to the Government's right to issue a Notice of Infraction to H&J for violations occurring on any day other than June 22, 2000.

**FILED            07/10/02**

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John P. Dean  
Administrative Judge